

OPINION
73-460

January 29, 1973 (OPINION)

Mr. Corliss F. Nelson
State Superintendent of Construction
Office of Secretary of State
State Capitol
Bismarck, North Dakota 58501

Dear Mr. Nelson:

This is in reply to your letter of January 19, 1973, with regard to the rulemaking power of the State Superintendent of Construction under Chapter 54-21.1-01.

Your question is stated as:

"Can the Construction Superintendent, with approval of the State Electrical Board, State Plumbing Board, State Fire Marshal and the North Dakota Mobile Home Dealers, promulgate changes or additions other than those provided in ANSI A119.1?"

Your rulemaking power is specified in Section 54-21.1-04 of the 1971 Supplement to the North Dakota Century Code as:

54-21.1-04. RULEMAKING POWER. - The construction superintendent shall prepare a Uniform Standards Code for Mobile Homes, containing standards for plumbing, heating, and electrical systems and for body and frame design and construction requirements of mobile homes. This code shall be in conformity with proper methods of construction for health and safety. On July 1, 1971, the construction superintendent shall adopt the standard now designated as Standard ANSI 119.1 by the American National Standards Institute (ANSI), formerly known as the United States of America Standards Institute (USAI), successor to the American Standards Institution (ASA) as the Uniform Standards Code for Mobile Homes. Following July 1, 1971, the construction superintendent may adopt any changes in, or additions to, the standards of the American National Standards Institute or its successor as changes in, or addition to, the Uniform Standards Code for Mobile Homes. Before adopting any changes or additions to the code, the construction superintendent shall consult the state electrical board, the state plumbing board, the state fire marshal and the North Dakota Mobile Home Association for their recommendations. The Uniform Standards Code for Mobile Homes shall be promulgated as a regulation of the construction superintendent. The code shall have the force and effect of law."

Considering the fact that the effective date of the statute was July 1, 1971 (it not being an emergency measure) there can be some difficulty in the application of the language of the statute. However, as to the specific terms of your question we feel that the language of the statute is quite clear.

The first two sentences of the statute authorize and require a "Uniform Standards Code for Mobile Homes" for this state. The third sentence of the statute requires that as of July 1, 1971, the construction superintendent adopt as such "Uniform Standards Code for Mobile Homes, "Standard ANSI 119.1." The remainder of the statute makes the "Uniform Standards Code for Mobile Homes," the regulation of the construction superintendent, gives it the force and effect of law and provides for its amendment.

The only provisions in the statute for changes in the "Uniform Standards Code for Mobile Homes" subsequent to July 1, 1971, authorizes the construction superintendent in consultation with specified other state agencies to adopt any changes in or additions to, the standards of the American National Standards Institute made by it or its successor, his discretion in this regard to be apparently governed by the legislative standards contained in the first two sentences of this section.

In conclusion, our opinion must thus be that the Construction Superintendent, with or without the approval of the State Electrical Board, State Plumbing Board, State Fire Marshal and the North Dakota Mobile Home Association may not promulgate changes or additions to the "Uniform Standards Code for Mobile Homes" other than those provided in ANSI 119.1, (as of date July 1, 1971) and changes made therein (either in standards or designation of the general rules) by the American National Standards Institute and its successor. While the Construction Superintendent does have some enforcement authority and authority to recognize standards, inspections, etc., from out of state, he has no further rulemaking power, under this chapter.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

ALLEN I. OLSON

Attorney General